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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re T.M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

T.M.,

Defendant and Appellant.

A147473

(Solano County
Super. Ct. No. J42743)

In this appeal, the parties are in agreement regarding all issues save one: whether, after modifying juvenile T.M.'s felony grand theft conviction to a misdemeanor, we should undertake to recalculate his maximum term of confinement directly or remand to the juvenile court to do so. For the reasons stated below, we agree with the People that a remand is the appropriate disposition of this appeal.

BACKGROUND

We need not describe in detail the facts underlying the charges sustained against T.M. because of the limited scope of this appeal. The following is a streamlined summary of the relevant information.

In November 2014, the Solano County District Attorney filed an original wardship petition under Welfare and Institutions Code section 602 alleging that T.M., then just shy

of 14 years old, attempted a robbery in violation of Penal Code¹ sections 664 and 211, a felony (count 1); carried a dirk or dagger in violation of section 21310, also a felony (count 2); exhibited a deadly weapon in violation of section 417, subdivision (a)(1), a misdemeanor (count 3); and committed vandalism in violation of section 594, subdivision (b)(2)(A), also a misdemeanor (count 4). These charges arose out of two incidents. In the first, T.M. and his teenage cousin confronted another youth on the street, blocked his path, and demanded his cell phone. When the victim denied having a cell phone, T.M. punched him in the face, brandished a knife, and began feeling the outside of the victim's front pants pockets. After T.M.'s cousin claimed he had a gun, the victim ran home and reported the incident to his mother. In the second incident, T.M. was found by the owner inside of her parked vehicle on the passenger side, and he then fled. While following him in her car, she discovered the glove compartment had been broken off its hinges although nothing from the car had been taken. In December and January 2014, T.M. admitted the allegations, and the court sustained the petition as to the two felony and two misdemeanor charges, calculated his maximum term of confinement at four years and four months, placed him on deferred entry of judgment (DEJ), and released him to the care of his aunt and uncle with the permission of his mother.²

On September 28, 2015, the Solano County District Attorney filed an amended wardship petition adding counts five through seven, alleging that T.M., by then 14 years old, had committed grand theft person in violation of section 487, subdivision (c), a felony (count 5); misdemeanor vandalism in violation of section 594, subdivision (a) (count six); and second degree robbery in violation of section 211, a felony (count 7). These charges arose out of an incident on September 24, 2014, during which T.M. and two cohorts approached some other youths, including A.L. and J.I., who were sitting on a

¹ All further statutory references are to the Penal Code.

² When it granted DEJ, the court sentenced him to serve 41 days at Solano County Juvenile Hall, but gave him credit for 41 days he had already served.

sidewalk with their skateboards. T.M. knocked a drink out of A.L.'s hand, went through his friends' backpacks, took a wallet containing 10 or 11 dollars from one of them, took A.L.'s cell phone from his pocket, removed the battery and threw the phone on the ground, smashing its screen. A.L. testified that the phone had cost \$150. T.M. also took a phone and headphones from J.I.'s pocket, asked for the password, and when it was not forthcoming, punched J.I. in the mouth.

Following a contested jurisdictional hearing at which A.L., J.I., a police sergeant and a police officer testified, the juvenile court found the allegations true and sustained the charges in counts five through seven of the amended petition. The court adjudicated him a ward and committed him to the custody of the probation department for placement in a foster home, group home or institution. The court determined T.M.'s maximum term of confinement for all charges was seven years and ten months.

ISSUES RAISED ON APPEAL

T.M. appealed from the judgment and disposition, asserting error in the trial court's decision sustaining the grand theft felony count (count 5) on the ground that there was no evidence that the value of the phone stolen from A.L. was more than \$950, the minimum necessary to render the offense grand theft and a felony. (See §§ 487, subd. (c), 490.2.) He contends the conviction for grand theft must be reversed and the offense must be reduced to petty theft (a misdemeanor) under section 490.2.

The Attorney General concedes the point. It acknowledges that under Proposition 47, enacted in November 2014, a charge of grand theft "from the person of another" that was defined as a felony prior to Proposition 47 is, in the wake of that measure, a misdemeanor if the value of the property taken does not exceed \$950. Because A.L. testified that the phone cost \$150, and T.M.'s offense was committed after the effective date of Proposition 47, "the theft of Angelo's cell phone must be considered

petty theft because its value does not exceed \$950. Accordingly, [T.M.’s] grand theft adjudication should be reduced to a petty theft adjudication.”³

T.M. argues that this court should modify T.M.’s maximum term of confinement. He contends that the maximum term should be reduced from seven years and ten months to seven years and four months. The Attorney General disagrees. She contends that we should remand the case for resentencing because “[t]he record does not contain a breakdown of the court’s calculation of [plaintiff’s] maximum term of confinement.” We agree with the Attorney General. There are a number of ambiguities in the record regarding the juvenile court’s sentencing decision, and we cannot discern precisely how that court calculated T.M.’s maximum term of confinement. We will therefore remand the case to the juvenile court for resentencing.

DISPOSITION

The case is remanded to the juvenile court for resentencing in light of the reduction of count five of the sustained petition from grand theft person to petty theft.

STEWART, J.

We concur.

KLINE, P.J.

MILLER, J.

³ The People did not rely on the theft of J.I.’s phone as the basis for the charge of grand theft but instead based the robbery charge on that theft.